

MINUTES OF MEETING  
OF THE INDUSTRIAL COMMISSION OF ARIZONA

Held at 800 West Washington Street  
Conference Room 308  
Phoenix, Arizona 85007  
Thursday, May 10, 2012 – 1:00 p.m.

Present:	David Parker	Chairman (video conference)
	Kathleen Oster	Vice Chair
	John A. McCarthy, Jr.	Member (telephonic)
	Susan Strickler	Member
	Michael G. Sanders	Member
	Laura L. McGrory	Director
	Andrew Wade	Chief Counsel
	Darin Perkins	Director, ADOSH
	Teresa Hilton	Commission Secretary

Chairman Parker convened the Commission meeting at 1:00 p.m. noting a quorum present. Also in attendance were Scot Butler, the agency's lobbyist; Eda Barolli of Snell & Wilmer; Jay Zweig, and Catherine Pearson, representing Omni Duct Systems AZ, Inc.

Approval of Minutes of April 25, 2012 Meeting

The Commission unanimously approved the Minutes of April 25, 2012 on motion of Mr. Sanders, second of Ms. Strickler.

Consent Agenda:

- a. Approval of Proposed Civil Penalties Against Uninsured Employers.
  1. 2C11/12-1727 Clearco Industries, Inc. dba  
Clearco Window Cleaning
  2. 2C11/12-1803 Tony's Mamma Mia Pizza Express, L.L.C.  
Db a Mamma Mia Brick Oven Pizza

Chairman Parker asked if any of the listed items needed to be removed from the consent agenda. Secretary Hilton stated that there were not. The Commission unanimously approved the items on the consent agenda on motion of Ms. Oster, second of Mr. Sanders.

Discussion &/or Action regarding Legislation

Scot Butler provided an end-of-session report and responded to questions from the Commissioners. He advised that Governor Brewer has signed the budget bill and he described the impact of the budget bill on the Commission. One of the impacts of the budget bill is the requirement that the Commission eliminate 43 full time positions which is about a 15% reduction in the number of full time positions and this is in addition to the positions eliminated over the last two years. Mr. Butler stated that personnel reform bill has passed the House and Senate with an amendment in the Senate and has been sent to the Governor. He described

amendments to the provision relating to the appointment of the Commission Director; that administrative law judge positions will become uncovered; and that the ADOSH Director will serve at the pleasure of the Commissioners. Mr. Butler also discussed out of session items of interest to the Commission and described his intent to provide a status report in early June.

#### Discussion &/or Action regarding the Development and Implementation of a Process for the Use of Evidence-Based Medical Treatment Guidelines under HB 2368

Laura McGrory recommended that a Director advisory committee be created for the initial phase of this project. She explained the difference between a Director advisory group and a Commission appointed committee and explained why having a smaller advisory group working with her would be the better approach for the initial phase of this project. She described her initial expectations with respect to the composition of her advisory group to include both payor interests and provider/claimant interests. She stated that she was working to have advisory group members that include representatives from a public self-insurer, a private self-insurer, a hospital self-insurer, SCF Arizona, a multi-state carrier, the medical profession, including, a chiropractor, and a doctor of osteopathic medicine, workers' compensation attorneys and Commission staff. Ms. McGrory stated that the initial task of this advisory committee would be to learn about the options for treatment guidelines and to learn about other states' experiences with treatment guidelines. The Commission discussed the possibility of forming subgroups as the need arises and formalizing the Director Advisory Committee to become a Commission Advisory Committee at a later point in time. Mr. Sanders stated that he would like to see that as a stated goal. Mr. Parker stated that evidence based medicine is not necessarily the means to an end but there are certain things that the Commission will want to accomplish. He stated that he would like to see the process improve and that evidence based medicine has the potential to do that. The Commission discussed whether goals should be outlined for the committee and Mr. Parker asked the other Commissioners to think about this. He suggested, as an example, that he would like to see a streamlined process that would move more quickly. There being no objection from the Commissioners, Mr. Parker stated that Ms. McGrory will form an advisory committee.

#### Discussion & Action of ADOSH Discrimination Complaint

#11-66 Windy Hite v. Green Valley Elks Lodge #2592 - Darin Perkins presented a summary of the Division's investigation of a discrimination complaint filed by Ms. Hite. In her complaint, Ms. Hite alleges that she was terminated from her employment with the Green Valley Elks Club of Lodge 2592 in retaliation for reporting she had been harassed by a fellow supervisor and encouraging her employees to file similar complaints with management. In response to the complaint, the employer presented its position with respect to Ms. Hite's separation from employment.

Mr. Perkins presented a history of Ms. Hite's employment and chronology of events and responded to questions from the Commission. The Division recommendation was not to pursue the complaint because there was insufficient evidence to support a causal link between protected activity and adverse action. Following discussion, the Commission unanimously voted not to pursue the complaint on motion of Ms. Oster, second of Ms. Strickler.

Discussion & Action of Proposed OSHA Citations & Penalties

Omni Duct Systems AZ, Inc.  
1700 S. Lewis Street  
Anaheim, CA 92805

Fatality/Accident  
Yrs/Business - 4  
Empl. Cov. by Insp. - 22

Site Location: 6875 W. Galveston Street, Chandler, AZ 85226  
Inspection #: I7163/316313535  
Insp. Date: 12/21/11

SERIOUS - Citation 1, Item 1 - Employees operating a forklift were not adequately trained (1910.178(I)(1)(i)).

(No inspection history in the past three years).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS - Citation 1, Item 2 - The load was not stable or arranged in a safe manner while employees operated a forklift (1910.178(o)(1)).

Div. Proposal - \$7,000.00

Formula Amt. - \$7,000.00

SERIOUS - Citation 1, Item 3 - The employer failed to ensure daily inspections were conducted on a forklift before employees were allowed to operate the forklift in the workplace (1910.178(q)(7)).

Div. Proposal - \$ 1,400.00

Formula Amt. - \$ 1,400.00

TOTAL PENALTY - \$15,400.00

TOTAL FORMULA AMT. - \$15,400.00

Darin Perkins summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. The Division recommendation for items 1 and 2 was for the gravity based penalty with no adjustment factors since the violations directly related to the fatality. Chairman Parker noted that there were representatives in attendance from Omni Duct and asked if they had anything to add that the Commission has not considered. Jay Zweig stated he had nothing to add but appreciated the opportunity. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$15,400.00 on motion of Ms. Oster, second of Mr. Sanders.

Sav-On Plating, Incorporated  
17 W. Watkins Road  
Phoenix, AZ 85003

Complaint  
Yrs/Business - 20  
Empl. Cov. by Insp. - 23

Site Location: 17 W. Watkins Road, Phoenix, AZ 85003  
Inspection #: N9589/316402676  
Insp. Date: 03/07/12

SERIOUS - Citation 1, Item 1 - An employee working from an elevated platform (wooden pallet) attached to the forks of a forklift and raised approximately eight feet above the floor was not protected by standard railings or equivalent fall prevention devices (1910.023(c)(1)).

(No inspection history in the past three years).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS - Citation 1, Item 2 - The emergency exit door was locked and not available to full instance use in the case of fire or other emergency. A key was present in the exit door lock; however the key was difficult to turn in order to open the door (1910.036(d)(1)).

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

SERIOUS – Citation 1, Item 3 –The emergency eye wash station located north of the Barrel Line did not function (1910.124(g)(2)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, Item 4 –Employees exposed to chemical splash hazards were not provided adequate eye protection (1910.133(a)(1)). There was another instance of this violation.

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

GRUOPED SERIOUS – Citation 1, Item 5(a) – The toilet was not kept clean to the extent that the nature of the work allowed (1910.141(a)(3)(i)).

Citation 1, Item 5(b) – The lavatory was not maintained in a sanitary condition (1910.141(d)(1)).

Citation 1, Item 5(c) – The wash sink provided for employees to wash their hands was not provided with a means for hand drying (1910.141(d)(2)(iv)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, Item 6 –The employer did not establish an energy control program (i.e., lockout/tag out) consisting of energy control procedures and employee training to ensure that energy sources were isolated and rendered inoperative prior to employees performing servicing or maintenance on machinery or equipment where unexpected energization or release of stored energy could occur and cause injury (1910.147(c)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

GROUPED SERIOUS – Citation 1, Item 7(a) – The nameplate and control lever markings were covered with dirt and not legible (1910.178(a)(6)). There was another instance of this violation.

Citation 1, Item 7(b) – A lift truck was placed in service with an inoperable horn (1910.178(q)(1)). There was another instance of this violation.

Citation 1, Item 7(c) – A lift truck used on a round the clock basis was not examined for defects after each shift (1910.178(q)(7)). There was another instance of this violation.

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

GROUPED SERIOUS – Citation 1, Item 8(a) – The employer did not certify that employees designated to operate lift trucks were periodically evaluated (1910.178(I)(1)(i)).

Citation 1, Item 8(b) – An unattended lift truck was observed parked just inside the southeast overhead doorway/ramp with the engine running. The closest employee was no less than 30 feet from the idling lift truck (1910.178(m)(5)(i)). There was another instance of this violation.

Div. Proposal - \$1,000.00

Formula Amt. - \$1,000.00

GROUPED SERIOUS – Citation 1, Item 9(a) – The original plastic pendant control box was inadequately repaired using metal and duct tape which left openings in the box thereby creating a potential shock hazard. Pendant controls were not clearly marked for identification of functions (1910.179(g)(1)(v)). There was another instance of this violation.

Citation 1, Item 9(b) – The outer insulation on electrical wires supplying the subject pendant box were damaged, exposing the lower section of wiring to contact with other equipment during normal operating conditions and eliminating strain relieve on the electrical wiring (1910.179(g)(2)(i)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, Item 10 – The drive gears on fourteen motors located along the east side of the entire Barrel-Line were not guarded (1910.219(f)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, Item 11 – The controls located on the face of the electrical control panel were inoperative. As a result employees reach into the open panel to manually switch on/off electrical equipment thereby exposing them to live electrical conductors (1910.303(b)(1)).

Div. Proposal - \$1,250.00

Formula Amt. - \$1,250.00

SERIOUS – Citation 1, Item 12- The junction boxes on two electric barrel-rotating motors (480 volt) were not provided with covers (1910.305(b)(2)).

Div. Proposal - \$ 1,250.00

Formula Amt. - \$ 1,250.00

TOTAL PENALTY - \$15,500.00

TOTAL FORMULA AMT. - \$15,500.00

Mr. Perkins summarized the citations and proposed penalty as listed. The Commission unanimously approved issuing the citations and assessed the recommended penalty of \$15,500.00 on motion of Mr. Sanders, second of Ms. Oster.

Noranco Manufacturing (USA) Ltd.,  
(a Delaware Corporation)  
dba Noranco Deer Valley Division  
1620 W. Knudson Drive  
Phoenix, AZ 85027

Planned  
Yrs/Business – 40  
Empl. Cov. by Insp. – 82

Site Location: 1620 W. Knudson Drive, Phoenix, AZ 85027

Inspection #: I7163/316402643

Insp. Date: 03/07/12

SERIOUS – Citation 1, Item 1 - A written lockout/tag out program was not developed and implemented for maintenance personnel or repair persons to prevent the release of stored energy during the performance of repair work on equipment, such as, but not limited to work on shapers, lathes, CNC and manual mill machines, mechanical presses, etc. (1910.147(c)(1)). (No inspection history in the past three years).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, Item 2 – One employee was operating a forklift without formal training and evaluation (1910.178(I)(1)(i)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, Item 3 –A press brake was lacking a guard at the point of operation (1910.212(a)(1)). There were four other instances of this violation.

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, Item 4 –An abrasive wheel bench grinder was lacking a guard to cover

the spindle end, nut and flange projections (1910.215(a)(2)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, Item 5 – One abrasive wheel bench grinder was lacking a work rest (1910.215(a)(4)).

Div. Proposal - \$100.00

Formula Amt. - \$100.00

SERIOUS – Citation 1, Item 6 – A mechanical power press did not have blocking in place to prevent entry into the front of the machinery while dies were being adjusted and or replaced (1910.217(c)(1)(i)).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$8,850.00

TOTAL FORMULA AMT. - \$8,850.00

Darin Perkins summarized the citation and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$8,850.00 on motion of Ms. Strickler, second of Mr. McCarthy.

Southwest Fiberglass, LLC  
4798 S. Julian Avenue  
Tucson, AZ 85714

Complaint  
Yrs/Business – 30  
Empl. Cov. by Insp. – 144

Site Location: 4798 S. Julian Avenue, Tucson, AZ 85714

Inspection #: T3633/316402627

Insp. Date: 03/07/12

GROUPED SERIOUS – Citation 1, Item 1(a) – The general exhaust ventilation system on the north side of the room (east section) where fiberglass resin was polymerized was not working, which impacted the designed arrangement and ventilation rate of the building (1910.106(h)(3)(iii)(a)). There were three other instances of this violation.

Citation 1, Item 1(b) – Containers of cured resin and trash were on the ground outside of the buildings and work areas (1910.106(h)(8)(iv)).

Citation 1, Item 1(c) – Plastic 5 gallon buckets containing waste materials were stored in the building and were not disposed of daily (1910.106(h)(8)(iii)).  
(No inspection history in the past three years).

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

SERIOUS – Citation 1, Item 2 – A pipe winding machine did not have the roller wheels guarded on the east end of the machine (1910.212(a)(1)). There was another instance of this violation.

Div. Proposal - \$1,750.00

Formula Amt. - \$1,750.00

TOTAL PENALTY - \$3,500.00

TOTAL FORMULA AMT. - \$3,500.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,500.00 on motion of Ms. Oster, second of Mr. Sanders.

Southwest Metal Spinning, Inc.  
310 E. Comstock Drive  
Chandler, AZ 85225

Planned  
Yrs/Business - 18  
Empl. Cov. by Insp. - 8

Site Location: 310 E. Comstock Drive, Chandler, AZ 85225  
Inspection #: L3419/316452945  
Insp. Date: 03/29/12

SERIOUS - Citation 1, Item 1 - One horizontal metal cutting band saw was not equipped with an adjustable blade guard to prevent the operator from contacting the unused portion of the cutting blade (1910.212(a)(1)). There was another instance of this violation.

(No inspection history in the past three years).

Div. Proposal - \$750.00

Formula Amt. - \$750.00

GROUPED SERIOUS - Citation 1, Item 2(a) - One abrasive wheel grinder was missing one work rest/tool rest (1910.215(a)(4)). There was another instance of this violation.

Citation 1, Item 2(b) - An abrasive wheel grinder did not have the work rest adjusted to a maximum opening of one-eighth inch (1910.215(a)(4)). There was another instance of this violation.

Citation 1, Item 2(c) - An abrasive wheel grinder did not have either tongue guard adjusted to within ¼ inch of the abrasive wheel (1910.215(b)(9)). There was another instance of this violation.

Div. Proposal - \$2,500.00

Formula Amt. - \$2,500.00

SERIOUS - Citation 1, Item 3 - A metal spinning lathe did not have the horizontal drive belts and pulleys fully enclosed (1910.219(d)(1)). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, Item 4 - A metal spinning lathe did not have the drive belts and pulleys fully enclosed (1910.219(d)(1)). There was another instance of this violation.

Div. Proposal - \$750.00

Formula Amt. - \$750.00

SERIOUS - Citation 1, Item 5 - The gear enclosure/guard for the small toggle mechanical power press did not enclose the gear to a height of at least 7' (1910.219(f)(1)). There was another instance of this violation.

Div. Proposal - \$ 750.00

Formula Amt. - \$ 750.00

TOTAL PENALTY - \$5,500.00

TOTAL FORMULA AMT. - \$5,500.00

Darin Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. He noted that adjustment factors should be applied to Citation 1, Item 2 which will result in a recommended penalty of \$750.00 and he recommended that Citation 1, Item 3 and Item 4 be combined into one citation as Item 3 with a penalty of \$750.00 and that Citation 1, Item 5 become Citation 1, item 4. The total proposed penalty would be \$3,000.00. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$3,000.00 on motion of Ms. Strickler, second of Ms. Oster.

Western Precooling Systems, Inc.  
P.O. Box 5083  
Oxnard, CA 93030

Accident  
Yrs/Business - 72  
Empl. Cov. by Insp. - 15

Site Location: 4139 E. Gila Ridge Road, Yuma, AZ 85365  
Inspection #: T3633/316176403  
Insp. Date: 12/05/11

GROUPED WILLFUL SERIOUS - Citation 1, Item 1(a) - The employer updated the process hazard analysis for YLLC Site #2 on October 10, 2011, and the employer did not consult with employees and their representatives on the conduct and development of this process hazard analysis (1910.119(c)(2)).

Citation 1, Item 1(b) - The employer updated the process hazard analysis for YLLC Site #2 on October 10, 2011 in response to changes made in the ammonia refrigeration system as part of the cooler building expansion, and the PHA did not identify that the water diffusion system listed as a "control" for multiple questions on the PHA was not operational, and was not being used by the technicians working at the site (1910.119(e)(1)).

(No inspection history in the past three years).

Div. Proposal - \$49,000.00

Formula Amt. - \$49,000.00

GROUPED SERIOUS - Citation 2, Item 1(a) - The emergency action plan established by the employer was not adequate in that the evacuation plan map posted in the YLLC Site #2 building had not been updated since additions to the building were constructed in the 2011 off season (1910.038(c)(2)).

Citation 2, Item 1(b) - Employees were working in a different building at the start of the 2011 season, and the employer did not review changes to the emergency action plan with each employee (1910.038(f)(3)).

Div. Proposal - \$3,500.00

Formula Amt. - \$3,500.00

SERIOUS - Citation 2, Item 2 - The employer did not review the operating procedures as often as necessary, in that the seasonal start up procedure for trailer R064 specified that the relief line be hooked up to the host system, and the pad where R064 was positioned did not have a host relief line available to hook up to R064 (1910.119(f)(3)). There were two other instances of this violation.

Div. Proposal - \$3,500.00

Formula Amt. - \$3,500.00

GROUPED SERIOUS - Citation 2, Item 3(a) - The employer hired a contractor to install piping and equipment on the ammonia refrigeration system for YLLC Site #2, and the employer did not obtain and evaluate the contract employer's safety performance and programs (1910.119(h)(2)(i)).

Citation 2, Item 3(b) - The employer hired a contractor to install piping and equipment on the ammonia refrigeration system for YLLC Site #2, and the employer did not inform the contract employer of the known potential fire, explosion, or toxic release hazards related to the contractor's work and the process (1910.119(h)(2)(ii)).

Citation 2, Item 3(c) - The employer hired a contractor to install piping and equipment on the ammonia refrigeration system for YLLC Site #2, and the employer did not implement safe work



practices to control the entrance, presence and exit of contract employees and contract employees working on the system (1910.119(h)(2)(iv)).

Div. Proposal - \$3,500.00

Formula Amt. - \$3,500.00

SERIOUS – Citation 2, Item 4 – A pre-start up safety review was not conducted for changes made to the YLLC Site #2 ammonia refrigeration system in 2009, which included the installation of a water diffusion tank and associated piping (1910.119(i)(1)). There were two other instances of this violation.

Div. Proposal - \$4,900.00

Formula Amt. - \$4,900.00

SERIOUS – Citation 2, Item 5 – Written procedures to manage change were not implemented, in that the employer initiated a management of change procedure in 2009 for equipment changes to the YLLC Site #2 ammonia refrigeration system, which included the installation of a water diffusion tank and associated piping, and the management of change procedure was not completed or reviewed as specified in the employer's written process safety management program and the employer's management of change form (1910.119(I)(1)). There was one other instance of this violation.

Div. Proposal - \$ 4,900.00

Formula Amt. - \$ 4,900.00

TOTAL PENALTY - \$69,300.00

TOTAL FORMULA AMT. - \$69,300.00

Mr. Perkins summarized the citations and proposed penalty as listed and responded to questions from the Commissioners. In response to a question from Ms. Oster, Mr. Perkins explained the informal conference procedure. Following discussion, the Commission unanimously approved issuing the citations and assessed the recommended penalty of \$69,300.00 on motion of Mr. Sanders, second of Ms. Strickler.

#### Announcements and Scheduling of Future Meetings

Ms. McGrory announced that Claims Manager, Noreen Thorsen, is retiring at the end of June and that she has selected Melinda Poppe as the new Claims Manager.

Ms. McGrory advised that staff is finalizing revenue numbers and they will be provided in the near future along with the 2011 annual report. She stated that ADOSH will hold a safety summit at the Wigwam Resort on August 7<sup>th</sup> and 8<sup>th</sup> before the Claims Seminar which will be held on August 9<sup>th</sup> and 10<sup>th</sup>.

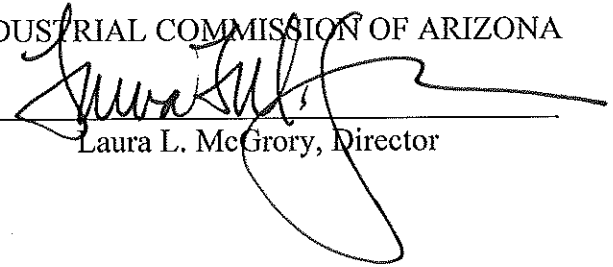
Ms. McGrory described new components of ADOSH's outreach and education efforts and the positive results from working with a media relations firm. Mr. Perkins provided copies of marketing materials including the heat illness prevention campaign and described efforts to reach the targeted audience. Ms. McGrory described the status of developing a separate website for ADOSH and explained some of the benefits of having that website.

Chairman Parker stated that meetings are scheduled for May 17<sup>th</sup>, 23<sup>rd</sup> and June 7<sup>th</sup>. Further meetings were scheduled for June 21<sup>st</sup> and 28<sup>th</sup>.

There being no further business to come before the Commission and no public comment, Chairman Parker adjourned the meeting at 3:35 p.m.


THE INDUSTRIAL COMMISSION OF ARIZONA

By

A large, stylized handwritten signature in black ink, appearing to read 'Laura L. McGrory', is written over a horizontal line.

Laura L. McGrory, Director

ATTEST:

A handwritten signature in black ink, appearing to read 'Teresa Hilton', is written over a horizontal line.

Teresa Hilton, Commission Secretary